

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

SBC COMMUNICATIONS INC.,	)	
SBC DELAWARE INC.,	)	
AMERITECH CORPORATION, and	)	
ILLINOIS BELL TELEPHONE COMPANY	)	
d/b/a AMERITECH ILLINOIS	)	
	)	98-0555
	)	
Joint Application for approval of the	)	
reorganization of Illinois Bell Telephone	)	
Company d/b/a Ameritech Illinois	)	
in accordance with Section 7-204 of The Public	)	
Utilities Act and for all other appropriate relief.	)	

**JOINT APPLICANTS' BRIEF ON EXCEPTIONS ON RE-OPENING**

Dennis K. Muncy  
Joseph D. Murphy  
Richard T. West  
Meyer, Capel, Hirschfeld,  
Muncy, Jahn & Aldeen, P.C.,  
306 W. Church St., P.O. Box 6750  
Champaign, IL 61826-6750

Paul K. Mancini  
Wayne Watts  
Joseph E. Cosgrove, Jr.  
SBC Communications, Inc.  
175 E. Houston  
Room 1258  
San Antonio, TX 78215

Attorneys for  
SBC Communications Inc. and SBC Delaware,  
Inc.

Louise Sunderland  
225 W. Randolph St., HQ27B  
Chicago, IL 60606

Theodore A. Livingston  
Christian F. Binnig  
J. Tyson Covey  
Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603

Attorneys for  
Ameritech Corporation and Illinois Bell  
Telephone Company d/b/a Ameritech Illinois

August 16, 1999

## **I. INTRODUCTION**

Since the filing of the original Joint Application in July of 1998, this Commission has been inundated with tens of thousands of pages of record evidence and arguments. Every party to this proceeding has now had an opportunity to articulate its position on every issue through numerous rounds of testimony, through two rounds of cross-examination and through at least six separate briefs. Having sifted through all of this, the Hearing Examiners have now provided the Commission with a HEPO on Re-Opening that, together with portions of the original Post Exceptions Proposed Order ("PEPO"),<sup>1</sup> lays the groundwork for approving a merger that not only meets the simple criteria of Section 7-204, but provides an unprecedented number of merger benefits to Illinois customers and a unique opportunity to spur the growth of competition for all segments of the telecommunications marketplace in the State of Illinois. In an effort to further expedite the final resolution of this docket, Joint Applicants will limit this Brief on Exceptions to the two remaining issues of critical importance to the viability of this merger and will, in addition, identify a handful of other issues that should be clarified or corrected through the Commission's final Order.<sup>2</sup>

## **II. JOINT APPLICANTS' INCREASED COMMITMENTS SHOULD REPLACE ANY ALLOCATION OF MERGER SAVINGS**

In the PEPO, the Hearing Examiners recommended that, pursuant to Section 7-204(c), the Commission should presumptively allocate 25% of actual net merger savings to customers and reserve the possibility of increasing that allocation up to 50% should Joint Applicants fail to meet certain conditions of the merger. As discussed in their Brief on Re-Opening (at 55), Joint Applicants continue their strong objection to the allocation of any merger savings. However, if the Commission insists on the allocation of some merger savings to customers, the PEPO's conclusion was at least supported by a

---

<sup>1</sup> Of course, the Commission will have to merge the PEPO with the HEPO on Re-Opening. Joint Applicants have provided as Attachment A to this Brief an index designating which elements of the final Order could be drawn from each of the Proposed Orders.

<sup>2</sup> Joint Applicants are providing as Attachment B to this Brief a separate document captioned *Joint Applicants' Proposed Language on Exceptions to Hearing Examiners' Proposed Order on Reopening*, which will detail the language

certain logic: Ameritech Illinois' customers would enjoy the benefit of merger savings through the fulfillment of merger conditions such as continued network investment, but, if Joint Applicants failed to meet those commitments, those customers would get the dollar savings instead.

Despite the fact that none of the Commissioners' questions on which this re-opening was premised took any issue with the PEPO's approach, the HEPO on Re-Opening scrapped that logic in favor of the following:

We further conclude on the arguments presented, that 50% of the net merger savings allocable to AI should be allocated to consumers using Staff's distribution methodology. This strikes a fair balance considering the commitment, performance and benchmark costs which will be incurred post-merger. (HEPO on Re-Opening at 86.)

Rather than striking a fair balance, this allocation, particularly viewed in the context of the history of this docket, results in an arbitrary and inequitable double extraction of benefits. Moreover, this allocation will be counterproductive to the encouragement of competition for residential and small business customers, and it will send the wrong message to the markets and public utilities in this state wishing to create efficiencies through re-organization. Disappointingly, in support of its conclusion, the HEPO on Re-Opening provides no articulated basis other than its unexplained (and unsupportable) assertion that "this strikes a fair balance." To appreciate the magnitude of this backward step, it must be put in context of the HEPO on Re-Opening's basis for determining the overall impact of the proposed merger.

The HEPO on Re-Opening repeats the inescapable conclusion that SBC is not an actual potential competitor in Illinois and that the proposed merger is not likely to have a material adverse effect on the markets over which the Commission has jurisdiction. HEPO on Re-Opening at 28-31. Moreover, it correctly acknowledges that Joint Applicants have responded to every inquiry posed by the Commission and made numerous commitments that will provide substantial additional merger benefits

to the State of Illinois and to retail and wholesale customers of Ameritech Illinois. It even acknowledges that Joint Applicants have provided a number of additional commitments that are over and above anything the Commission requested. HEPO on Re-Opening at 125. Therefore, the only possible conclusion is that the merger will provide substantial support to competition and substantial benefits to Illinois citizens as well as Ameritech Illinois' CLEC competitors.

In response to these numerous additional merger benefits, however, the HEPO on Re-Opening "rewards" Joint Applicants' additional commitments by doubling the basic allocation rate to 50% and eliminating the recognition that customers benefit from Joint Applicants' meeting their commitments. Thus, it double dips by accepting Joint Applicants' additional commitments while also grabbing the additional merger savings that otherwise would have funded those commitments. The HEPO on Re-Opening simply cannot have it both ways. Ameritech Illinois cannot be expected simultaneously to spend millions to continue its ongoing efforts to open its markets more fully to competition, to spend millions more to implement the many pro-competitive market opening commitments made here and to the FCC Staff, and to flow through millions more by arbitrary rate reductions. Such an approach adversely impacts competition in Illinois by potentially reducing prices below cost and dilutes the ability of SBC/Ameritech to compete on a national and global basis.

As Joint Applicants have consistently explained, each commitment they make results in a benefit to customers and a cost to shareholders. While the PEPO was objectionable insofar as it allocated any merger savings, it at least attempted to recognize the relationship between fulfilling commitments and allocating merger savings. Following on that logic, Joint Applicants' *numerous* additional commitments should have resulted in a *decreased* presumptive allocation of savings while retaining the Commission's ability to allocate savings if Joint Applicants failed to meet their commitments. Joint Applicants' Proposed Order articulated just such a proposal by lowering the savings base to zero and providing for an allocation of up to 25% for any failure by Joint Applicants to meet their commitments.

Such an unprincipled approach misses the long-term goals of this Commission, including, importantly, that of promoting competition. For example, using merger savings to lower retail rates will be counterproductive to encouraging retail competition, particularly for residential and small business customers. CLECs wishing to enter the market for residential and small business customers already face a price structure from Ameritech Illinois that, due to a legacy of support from larger business customers, is too low relative to the cost of providing the service. Forcing that retail price down even further without regard to that price structure will only make competition for those customers even less profitable and less likely. This will, in the long term, only deter the aggressive entry by competitors and thus forestall market driven pricing for some time for these market segments.

The HEPO on Re-Opening also ignores the implications of Ameritech Illinois' alternative regulation plan and the risk that Ameritech Illinois' shareholders bear to the exclusion of Ameritech Illinois' customers regarding the financial risks of the merger. Moreover, this substantial allocation of savings, without any articulated policy basis for making the allocation, will have the effect of driving investment away from Illinois public utilities, since it sends the unmistakable message that Illinois will seek to grab as much of the merger benefits as it can without any reasoned consideration of relative risks being undertaken by shareholders and customers or the economics of the public utility seeking reorganization or the economics of the reorganization at issue.

For all of these reasons, the Commission should make no arbitrary allocation of merger savings to customers, and thus allow Joint Applicants to use those merger savings to meet the commitments they have made and the conditions that the Commission imposes. Should the Commission conclude over Joint Applicants' strong objections that some allocation of merger savings is still justified, it should return to the model articulated in the PEPO and Joint Applicants' Proposed Order, using zero as the base and providing for an allocation of up to 25% should Joint Applicants fail to meet certain

commitments, as outlined in Joint Applicants' Proposed Order and as provided in the Joint Applicants' Proposed Language on Exceptions (Attachment B).<sup>3</sup>

### **III. THE COMMISSION SHOULD NOT REQUIRE THE IMPORTATION OF ARBITRATED PROVISIONS OF INTERCONNECTION AGREEMENTS**

In response to the Commissioner' questions, Joint Applicants made a number of Interconnection Commitments. The HEPO on Re-Opening concluded that Joint Applicants had responded to the Commission's questions, but nevertheless made one substantial change. Joint Applicants had committed that Ameritech Illinois would provide to CLECs in this state terms and conditions that were *voluntarily negotiated* between CLECs and SBC/Ameritech BOCs in other states. It should also be noted that this is the commitment that was included in the proposed conditions negotiated among SBC, Ameritech and the FCC Staff. The proposed FCC conditions that related to in-region interconnection do *not* include the importation of arbitrated agreements. The HEPO on Re-Opening expands the commitment proposed by Joint Applicants to require Ameritech Illinois to provide CLECs in Illinois not only with terms and conditions voluntarily negotiated, but also with terms and conditions that any CLEC received through arbitration with another of SBC/Ameritech's BOCs.

This materially changes Joint Applicants' voluntary commitment and substantially compromises this Commission's ability to control the content of interconnection agreements in Illinois. However, in order to understand the impact of this change, it is important to understand how the process would work without it.

While the duties of telecommunications carriers (including the duty to negotiate interconnection agreements in good faith) are set forth in Section 251 of the federal Telecommunications Act of 1996 ("FTA 96"), those duties are implemented through interconnection agreements, which are controlled by

---

<sup>3</sup> The Commission should also correct the reference in Condition 12 to its on-going "TELRIC investigations," since one of the investigations apparently being referenced, Docket No. 96-0397, really pertains only to poles and conduits and not to TELRIC pricing.

Section 252 of FTA 96. Under Section 252, agreements can be reached either through negotiation or through arbitration. All resulting agreements are ultimately submitted to the state commission for approval. 47 U.S.C. § 252(e). Where agreements are reached without arbitration, they do not need to comport with the standards set forth in Section 251. *Id.* § 252(e)(2). However, where an arbitration is involved, the Commission may impose an arbitrated resolution only under the standards set out in Section 252(c), which includes a requirement that the Commission "ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251."

Through Interconnection Commitment A, Joint Applicants are committing to provide CLECs in Illinois access to all in-region negotiated agreements between CLECs and Joint Applicants' LECs in other states, whether or not such agreements comport with Section 251. Of course, this Commission will, in all cases, evaluate those agreements for non-discrimination and consistency with the public interest. Joint Applicants excepted from that Commitment, however, provisions that Joint Applicants have not agreed to and that SBC/Ameritech contend are outside of the requirements of Section 251. The HEPO on Re-Opening suggests that such provisions should be introduced into Illinois so long as they have been approved by *any* commission reviewing an arbitration involving an SBC/Ameritech BOC.

As a threshold matter, any such requirement would deprive Joint Applicants of their federal statutory right to arbitration of disputed issues regarding interconnection agreements. *See* 47 U.S.C. § 252(b)(1) ("the [requesting carrier] or any other party to the negotiation may petition a State commission to arbitrate any open issues"). Any attempt by the Commission to deprive Joint Applicants of a federal statutory right as a condition of receiving state approval would be pre-empted under federal law and therefore of no force. U.S. Const. Art. VI, cl. 2; *see MCI Telecommunications Corp. v. GTE Northwest, Inc.*, 41 F. Supp.2d 1157, 1178 (D. Or. 1999).

Moreover, the HEPO on Re-Opening does not consider the impact of its proposal in circumstances where one or more of those other state commissions have ruled against a CLEC and in favor of SBC/Ameritech on any such provision. Needless to say, no CLEC has suggested that it would be willing to be bound by any such decisions here in Illinois. Nor does it consider the impact of an arbitration ruling contrary to a particular provision previously rejected by the Illinois Commission. Nor does the HEPO on Re-Opening consider the circumstances of an arbitration ruling in favor of a CLEC in another state, which may be predicated on some unique aspect of that state's network, OSS, policy or law or interpretation of federal or state law.<sup>4</sup> In effect, the HEPO on Re-Opening would result in the completely unfair and unreasonable circumstance where Ameritech Illinois would have to offer terms even if they had already been declared by 12 different commissions -- including this Commission -- to be outside of the requirements of Section 251 so long as *one* state, for whatever reason, reached a different conclusion.

While the HEPO on Re-Opening does suggest that Joint Applicants may seek a waiver of their obligation to provide particular arbitrated interconnection provisions in Illinois, it does not spell out in any level of detail what procedures and standards would be used in seeking a waiver.<sup>5</sup> Joint

---

<sup>4</sup> Indeed, Ameritech has already been subjected to different arbitration rulings on the exact same issue from different commissions within its five-state region.

<sup>5</sup> One possible waiver procedure would be to allow Joint Applicants to raise their objections to providing an arbitrated provision through a "waiver" process that mirrors a Section 252 arbitration. For example, the waiver would not have to be sought unless a CLEC demanded inclusion of the provision and the Illinois Commission would use Section 252 arbitration standards to evaluate the waiver. While this procedure would be consistent with the HEPO on Re-Opening's proposal, it would ultimately be a more circuitous route to reach the same outcome suggested by Joint Applicants in their Proposed Order.

Applicants' proposal, on the other hand, relies upon the existing process articulated in Section 252, which allows this Commission to make appropriate arbitration findings. Even under Section 252's arbitration procedure, any CLEC wishing to arbitrate a provision that it had successfully arbitrated in another state could bring the other state's decision to this Commission's attention and this Commission could give it appropriate weight. By contrast, it is completely unclear under what standard the decisions of other states would be weighed in the HEPO on Re-Opening's "waiver" process.

In summary, Joint Applicants have provided a reasonable and workable Interconnection Commitment and the Commission should not unreasonably extend that commitment in a way that is inequitable, unjustified and introduces procedural uncertainties.

#### **IV. THE COMMISSION SHOULD CLARIFY OTHER ISSUES IN ITS FINAL ORDER**

In addition to the two major issues raised above, the HEPO on Re-Opening raised several other issues by changes it made or declined to make to the PEPO. The most important issues are set out below. All such issues are covered by Joint Applicants' Proposed Language on Exceptions (Attachment B).

##### **A. There Is No Record Basis of Justification For the HEPO On Re-Opening's Imposition Of \$90 Million In Penalties For The OSS Commitments**

Appropriately, the HEPO on Re-Opening concludes that Joint Applicants' commitments with regard to improving the performance of Ameritech Illinois' OSS respond to the Commission's questions. But, apparently mistakenly transposing the potential liquidated damage cap from the benchmark and performance measures commitment, the HEPO on Re-Opening concludes (at 72) that "[i]n the event the Joint Applicants' OSS fail to meet their OSS commitments, they will incur penalties up to \$90 million annually." Neither Joint Applicants nor any other party proposed such a penalty related to the OSS commitments. Applying this condition to the OSS commitments has no basis in the record. Moreover, it is not justified, nor can it be applied in any reasonable manner.

In this record on re-opening, Joint Applicants have consistently explained that they cannot agree to specific economic penalties with regard to the OSS collaborative process. *See, e.g.*, Joint Applicants' Brief on Re-Opening at 48-49.<sup>6</sup> Since the collaborative process is an open process, it is not within the control of Joint Applicants and it is geared toward developing standard service interfaces with CLECs, Joint Applicants' ability to meet their commitments is completely dependent upon the cooperation of those CLECs. Those CLECs not only have divergent interests among themselves, but also are in direct competition with Joint Applicants and therefore CLECs will have incentives to be less than fully cooperative. Add the potential that these CLECs could impose an additional \$90 million a year in costs on SBC/Ameritech and it all but guarantees the failure of the OSS collaborative process.

That is why Joint Applicants did not propose and would never voluntarily agree to specific economic penalties with regard to the OSS collaborative process.<sup>7</sup> Only Staff proposed such a penalty. *See* Staff Brief on Re-Opening at 49; Proposed Order at 39. Staff cited no record basis for this "penalty" and there is none. Joint Applicants can only conclude that Staff confused the \$90 million cap attached to the liquidated damages commitment relating to non-compliance with performance measurements. Of course, Joint Applicants did make the commitment with regard to liquidated damages related to non-compliance with performance measures and stand by that commitment.

Not only does this transposition result in an unreasonable penalty being created out of whole cloth, there is no explanation or standard as to what constitutes Joint Applicants' "fail[ure] to meet their OSS commitments" sufficient to incur a \$90 million annual penalty. Even assuming that the \$90 million were treated as a cap, there is no explanation as to what, if any, processes apply to test the question of

---

<sup>6</sup> By comparison, Joint Applicants' analogous proposals to the FCC have penalties that were voluntarily proposed by SBC/Ameritech, but only with regard to completing Phase I (planning) and Phase 3 (implementing the outcome of the collaborative process). The proposed FCC penalties also do not reach the collaborative process and are significantly lower than the penalties proposed in the HEPO on Re-Opening even though the FCC proposal applies to 13 states.

<sup>7</sup> To the extent that the Commission is concerned about monitoring Joint Applicants' compliance with this commitment or any other, it should bear in mind that under the proposals they have made to the FCC, Joint Applicants will be engaging a third party auditor to audit and verify their compliance with all FCC conditions (which include a similar OSS collaborative) and that audit and verification will be made available to all of SBC/Ameritech's state commissions. Joint Applicants would not

whether there has been any failure, how actual penalties would be assessed and to whom such penalties would be paid.<sup>8</sup>

The \$90 million penalty also arises in Paragraph (9) of the Findings and Ordering Section of the HEPO on Re-Opening (at 152). That paragraph asserts that "if the Joint Applicants do not comply with the conditions set forth herein, the Commission will impose the maximum penalty provided by law, with a penalty cap of \$90 million annually." Again, Joint Applicants can only conclude that this is misattribution of liquidated damages, since, otherwise, the finding has no basis in the record. Like the OSS penalty, Paragraph (9) also does not articulate any procedures as to how or under what circumstances the penalty could be assessed. It would be wholly unreasonable for the Commission to impose such a potentially onerous penalty without any explanation or statutory basis as to the circumstances or procedures for its imposition.

Given the apparent transposition of the benchmark and liquidated damage provisions and the lack of statutory basis to impose multiple \$90 million annual penalties, Joint Applicants have provided in Attachment B language intended to articulate the liquidated damage assessments to which Joint Applicants have made commitments. In addition, as discussed above, Joint Applicants have provided language to reinstate the graduated savings allocation as a method of making assessments against missed commitments.

B. Out-of-Service Over 24 Hours (Condition 23)

Although it was not raised as an issue by the Commissioners' questions, the HEPO on Re-Opening changed positions on how to rectify Ameritech Illinois' perceived non-responsiveness to its out of service over 24 hour ("OOS>24") obligations. *See* HEPO on Re-Opening at 136-37 (Condition 23). In the PEPO, 90 days after closing on the merger, SBC/Ameritech would have submitted a plan

---

object and, in fact, would encourage this Commission to require such an engagement to assess compliance with the conditions specific to Illinois.

<sup>8</sup> Any suggestion that such penalties might be paid over from SBC/Ameritech, to stakeholders on the other side of the collaborative would most certainly sabotage that collaborative process from the outset.

for correction and the Commission would have dealt with Ameritech Illinois' non-compliance through a show cause order in Docket No. 98-0252. Moreover, the PEPO appropriately noted that a Section 7-204 proceeding did not supply the appropriate notice for imposing penalties on Ameritech Illinois for its OOS>24 record. (PEPO at 32.) The PEPO's conclusions in this regard were appropriate and should not have been disturbed.

Nevertheless, the HEPO on Re-Opening, without explanation, abandoned that approach in favor of the penalty provision proposed by Staff at 105-08 of Staff's Initial Brief. There, Staff proposed that:

Upon completion of this merger, the Company shall amend the Alternative Regulation formula currently in place in such a manner that the "Q" component [which is currently \$4 million] will be \$8 million for any missed minimum service requirement. Additionally, in the event the Company misses the same minimum service requirement two consecutive years, the "Q" for that item will increase to \$16 million for the second year. If the Company misses the same minimum service requirement three consecutive years, the "Q" for that item will increase to \$32 million in the third year. If the Company misses the same minimum service requirement four consecutive years, the "Q" for that item will increase to \$64 million. If the Company misses the same minimum service requirement all five consecutive years, the "Q" will increase to \$128 million.<sup>9</sup>

Aside from being an unnecessary and unjustified change to the PEPO, Staff's proposal is not sufficiently clear as to how it will work on a going-forward basis. For example, it does not identify during what period the "missed minimum service requirements" would be measured. That ambiguity is of critical importance. While the merger approval is supposed to focus on the impact of the merger, under Staff's proposal, SBC could immediately be saddled with a doubled Q factor for non-compliance with any service quality standard and, depending on the period used for compliance, might be hit with a quadrupling of that factor for OOS>24 even before SBC has an opportunity to exercise any control over the situation. If the Commission insists on using Staff's model, it should not double the \$4 million

---

<sup>9</sup> There are eight service/quality measures in the alternative regulatory plan Q component and, of the eight, only OOS>24 hours was a subject of this proceeding. Yet, under the proposed language, all eight measures would be subject to the \$8 million penalty provision, *i.e.*, for a total of \$64 million. Joint Applicants believe this is overkill that increases risk without

Q factor for non-compliance for any period that pre-dates SBC's ability to rectify Ameritech Illinois' compliance.<sup>10</sup>

C. Rate Cap on "Residential and other basic services" (Condition 24)

Condition 24 asserts that "Residential and other basic services will be capped at current rates through to July 1, 2002." HEPO on Re-Opening at 137. As it appears to be the Commission's intention to cap basic service rates for residential customers, the Commission should clarify that this provision relates to a cap on "basic residential services," a definition which is consistent with Illinois statutory definitions. *See* 220 ILCS 13-506.1(c). The present language in the HEPO on Re-Opening implies that all residential rates would be capped, despite that fact that some residential services are competitive. It also implies that there are "basic services" that are other than residential, which is inconsistent with the PUA definition and is otherwise undefined. The Commission should correct these potential ambiguities now in order to eliminate unnecessary disputes that would likely arise in the future regarding the proper implementation of this condition.

D. The Commission Should Correct The Basis for Its Finding That Joint Applicants Are Not Actual Potential Competitors In Illinois

While the HEPO on Re-Opening reaches the correct conclusion that SBC is not an actual potential competitor in Illinois, it still makes certain findings that are contrary to the case law and the manifest weight of the evidence. For example, the HEPO on Re-Opening incorrectly concludes that SBC "would likely have" entered the Illinois market other than through this merger. For the reasons stated in SBC's Brief on Re-Opening (at 11-27), this finding is unsupported and the Commission's HEPO on Re-Opening should be amended based on the language in Joint Applicants Proposed Language on Exceptions (Attachment B). Similarly, although the HEPO on Re-Opening reaches an appropriate conclusion even under the novel competitive theories advanced by Staff, as explained by

---

any offsetting reward.

<sup>10</sup>

If the Commission is determined to solve the perceived compliance problem with OOS>24 hours in this docket, and

Joint Applicants in their prior briefs, those theories are ultimately inappropriate and need not be considered by the Commission.

E. The HEPO on Re-Opening Proposes Micro-Management of Joint Applicants' 9-1-1 Compliance

With regard to the 9-1-1 issue, the HEPO on Re-Opening leaves in language from the PEPO suggesting that Joint Applicants must receive Commission approval for any changes to the 9-1-1 staff. While Joint Applicants do not object to seeking Commission approval prior to integrating Illinois' 9-1-1 system into any other system, requiring Commission approval for employment changes would only clog the Commission's docket with unjustified micro-management of Joint Applicants' business and internal personnel decisions. This condition would also unfairly limit the career and advancement opportunities of the hard working employees who are currently performing 9-1-1 responsibilities.<sup>11</sup>

F. The HEPO on Re-Opening Continues to Interpret Section 7-204(f) in an Illegally Broad Manner

The HEPO on Re-Opening (at 99-100), like the PEPO, interprets Section 7-204(f) as authorizing the Commission to impose conditions on its approval of a reorganization even if those conditions are not necessary to make the findings required by Section 7-204(b). Joint Applicants explained in their Brief on Exceptions to the HEPO (at 28-33) and at oral argument why this approach is overbroad and violates both constitutional law and the rules of statutory construction. Simply put, Section 7-204(f) cannot be used as a catch-all provision authorizing the Commission to impose any and all conditions it wants, regardless of their relevance to the impact of the merger itself or to the specific requirements of the rest of Section 7-204. Rather, subsection (f) is a tool for ensuring that a reorganization satisfies the specific requirements of Section 7-204(b), nothing more. The HEPO on Re-Opening should be revised to interpret Section 7-204(f) in compliance with the law.

---

avoid potential retroactive treatment, Joint Applicants have suggested alternative language in Attachment B.

<sup>11</sup> When the Commission discussed the subject, the clear interest appeared to be integration of the systems and not the transfer of employees. The Commission's final Order should focus on what the Commission saw as important, not on any and all incidental matters involving 9-1-1 service.

## V. CONCLUSION

This Commission now has the opportunity to approve a merger that will allow Ameritech Illinois to better serve its customers as a stronger and more effective competitor in a telecommunications market in which the only constants are increased competition and rapid change. While Joint Applicants' competitors urge this Commission to limit its merger review to a telecommunications market of the past, those same competitors pursue combination after combination in response to the telecommunications market of the future in which they and Joint Applicants are already in competition. Similarly, the government and consumer intervenors urge this Commission to divert to Illinois a vast and unjustified share of the benefits of this merger achieved across all the combined company's states by sucking every dollar of estimated savings that may be realized out of the merged entities so that those dollars cannot be invested by Joint Applicants. Both approaches are shortsighted and counterproductive for a Commission shepherding its largest incumbent LEC into the ever-more competitive market of the next century of telecommunications.

This is a market where incumbent LECs are losing market share for existing large business customers at an accelerating rate and where those same incumbent LECs are, in many instances, being chosen to provide service to barely more than half of the large businesses taking new services within their existing exchange boundaries. It is a market where data services -- which were a marginal part of the business just a few years ago -- have now surpassed voice to become more than half of the traffic on the network. It is a market where services as disparate as local telephone, cable television, Internet access and long distance are now being bundled by corporate combinations, many of which were separate companies when this merger was proposed 15 months ago.<sup>12</sup> And while much has been made of the supposedly unassailable position of RBOCs like Ameritech, this is a market where one such RBOC, US West, has been subject to competing acquisition bids from two companies, one of which has

---

<sup>12</sup> A list of some of those combinations was included as Attachment 2 to the Direct Testimony on Re-Opening of James

fewer than 300 employees and the other of which did not even exist just a few years ago.

It is against this fast-changing and increasingly-competitive backdrop that the Commission must evaluate a merger the approval of which will support Ameritech Illinois' ability to become a more effective competitor and the disapproval of which will risk relegating Ameritech Illinois to the role of a regional provider of limited telecom services in an environment that places a premium on national and global scale and scope, and one-stop shopping capabilities. This Commission can protect existing customers *and* promote competition only by acknowledging present realities and looking forward to the markets in which Ameritech Illinois will have to compete. Looking backwards at monopoly franchises and markets that exist only in competitors' rhetoric risks relegating Ameritech Illinois, the backbone of the Illinois telecommunications network, to a secondary status in an Illinois economy that is and will continue to be dependent on first-rate services from all its telecommunications providers.

Based on the HEPO on Re-Opening as modified by these exceptions, the Illinois Commission can approve a merger that will allow Ameritech Illinois the opportunity to become a stronger competitor for years to come while simultaneously accelerating and spreading the benefits of competition to all types of Illinois customers, including residential customers. Joint Applicants respectfully request that the Commission grant the Amended Joint Application and approve the proposed merger with either no conditions or if some conditions must be imposed, they should be reasonable and well-tailored.

DATED this 16<sup>th</sup> day of August, 1999.

SBC Communications, Inc. and  
SBC Delaware, Inc.

By:\_\_\_\_\_

Dennis K. Muncy  
Joseph D. Murphy  
Richard T. West  
Meyer, Capel, Hirschfeld,  
Muncy, Jahn & Aldeen, P.C.,  
306 W. Church St., P.O. Box 6750  
Champaign, IL 61826-6750

Paul K. Mancini  
Wayne Watts  
Joseph E. Cosgrove, Jr.  
SBC Communications, Inc.  
175 E. Houston  
Room 1258  
San Antonio, TX 78215

Ameritech Corporation and Illinois Bell  
Telephone Company d/b/a Ameritech  
Illinois

By:\_\_\_\_\_

Louise Sunderland  
225 W. Randolph St., HQ27B  
Chicago, IL 60606

Theodore A. Livingston  
Christian F. Binnig  
J. Tyson Covey  
Mayer, Brown & Platt  
190 South LaSalle Street  
Chicago, Illinois 60603